

## Abstracts

### New Developments in Legal Regulations pertaining to Dismissal & Fixed-Term Employment Contracts in the Labour Standards (Amendment) Law 2003

**Hiroshi Karatsu** (Nanzan University)

New developments have taken place in the legal regulations pertaining to dismissal and fixed-term employment contracts due to amendment of the Labour Standards Law in 2003. The most important reform comprises the inclusion of a new clause which was added based on case law concerning the abuse of the right of dismissal. However, it should be noted that the amendment does not address systematic regulations regarding the procedural aspects for dismissal. It has also failed to stipulate a statutory rule which would limit an employer's ability to refuse to renew fixed-term contracts which have been repeatedly renewed in the past. To promote effective regulation, it is essential that a legal framework be designed which combines regulation for fixed-term contracts and regulation for dismissals.

### Revisions of the Employment Security Law and Worker Dispatching Law, as Discussed from a Legal Perspective

**Ikuko Mizushima** (Osaka University)

In 2003, the Employment Security Law and the Worker Dispatching Law underwent revision. Such revision was part of the deregulation initiatives that have been advanced by the Japanese Government. The reform aims to stimulate the labour market and hopefully improve the labour market situation. In this paper, the author presents an outline of the revisions and points out several legal issues.

### An Economic View on the Effects of Recent Labour Legislation in Japan

**Isao Ohashi** (Hitotsubashi University)

This brief report addresses the economic effects created by recent labour legislation measures in Japan, and focuses on how "restrictions regarding worker dismissal" have affected the welfare of workers and corporate costs. The paper stresses that the impact produced by "restricting an employer's ability to terminate workers at their own discretion" depends on which method they use for wage determination. In the case of wage rigidity, dismissal restriction raises employment and social efficiency. And in the case where wages are flexible and a Coasean approach (where workers post a bond equal to firing costs) toward payment practices is absent, they are decreased. This implies that the particular method used for wage determination in Japan is a key variable in judging dismissal legislation.

### Recent Revision of the Labour Standards Law as It Relates to Personnel Management

**Katsuhiko Ogino** (Toyota Motor Corporation)

This paper considers, from the standpoint of a company personnel manager, the effects that the amendment to the Labour Standards Law during the 156th Ordinary Session of the Diet has had on personnel management at corporations. Although the extension made to the upper limit of the defined period for labour contracts has not produced any major effects (other than the possibility of extended contract periods for contract employees), it represents a valuable step towards further diversification of the ways people work. And it is hoped that further deregulation will also be forthcoming.

The Estimates and Problems of the Revision of the Labour Standards Law: As Viewed  
by an Employees' Attorney

**Kunio Miyazato** (Lawyer)

The revised Labour Standards Law, enforced from January 2004, accelerated the move toward deregulation in terms of extended fixed-term contracts and relaxation of the requirements for introducing the discretionary work scheme. We appreciate the fact that the amendment incorporated a provision to limit reasons for dismissal in the Labour Standards Law for the first time in Japan. Hitherto, restriction on dismissal has depended on case law, which was insufficiently clear regarding dismissal restriction and regulatory power. The codification in the amendment of the theory of abuse of the right to dismiss established by the judgments of the Supreme Court is significant in terms of protecting workers from dismissal and establishing standards for judging labour disputes concerning dismissal. However, there are unclear and insufficient points in the amendment such as the responsibility of stating and proving the reasons for dismissal and limitation of additional statements on the reasons for dismissal in court. These points should be improved in future dismissal restrictions. Concerning fixed-term labour contracts, the upper limit of the contract period was extended but there remain important points to be codified in future legislation, such as objective reasons for executing contracts, regulation on refusal to renew fixed-term contracts and equal treatment as compared to non-fixed-term contracts. The remaining issues in connection with the amendment need to be considered in the enactment of the "Labour Contracts Law" which is expected to be discussed in the future.

Dismissal Disputes and Revision of the Labour Standards Law, as Viewed by an  
Employers' Attorney

**Makoto Nakamachi** (Lawyer)

As an attorney who represents employers, I can list the following points concerning the legal doctrine as it pertains to abuse of the right of dismissal. First, employers normally state and prove specific reasons for dismissal during the early phase of a dismissal action. This, however, does not mean that the employer side bears total responsibility for stating and proving their case concerning abuse of the right to dismissal. Second, workers often bear the responsibility to state and prove their cases based on the supporting facts, concerning abuse of the right to dismissal. Employers meanwhile often bear the responsibility to state and prove their cases based on negating facts, and are not responsible for stating and proving their cases when there is an absence of supporting facts. Third, a determination regarding "abuse of the right to dismissal" is made when an overall evaluation of: 1) the supporting facts are successfully proven by a worker and 2) the negating facts are successfully proven by an employer.